PETITION FOR WRIT OF CERTIORARI

112

Supreme Court, U.S.
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In The

Supreme Court of the United States

PEPI SCHAFLER,

Petitioner,

v.

RICHARD SPEAR,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was Petitioner's Chapter 7 filed on March 26, 1996, closed and discharged by the court on July 7, 1996, reopened two years later by people without standing, profiteers and predators, through lies and fraud on the court, in violation of Title 11 U.S.C. §350 which reopening is a remedy only available to the debtor or creditor and not predator fueled by the revenge of a scorned, nasty former husband who promised predatory profiteering to anyone involved which the court erroneously failed to close promptly, and did that auspicious reopening continue to drive this matter for more than a decade?

2. Did the emergency change of venue to California create a new estate and entitlements based on the old discharged case, which Respondent claimed and the Title I court claimed, and five years after the discharge, were Petitioner's exempt retirement funds in an amount of almost one half million dollars, through force, terrorism, threats, burglary and other nazi methods, extorted and stolen, and given to Respondent Spear as a gift, and called this gift "fees" for getting himself "fees"?

3. Did this Article I court, where the change of venue landed, have authority and jurisdiction, and was there standing by Respondent for the court to do that considering that the law of the case doctrine dictates otherwise, and is bankruptcy a lifelong franchise for marauding predators?

QUESTIONS PRESENTED – Continued

4. Were all of Petitioner's constitutional rights to due process, equal protection, a jury trial, not to be burglarized, access to unbiased courts, right to counsel, denied and trampled on, and were all of her numerous pleadings to various courts and appeals ever scheduled or reviewed, or did all the many courts Petitioner approached ignore her and her pleas?

5. Should the malfeasants in the present matter be ordered to disgorge their ill-gotten gains for their unjust enrichment, like other miscreants have to do?

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DECISIONS BELOW

The Court of Appeals denied reconsideration and en banc review on August 28, 2008, affirming its own decision of May 28, 2008, affirming the BAP (Bankruptcy Appellate Panel) dated January 18, 2007.

The Court of Appeals affirmed the BAP virtually wordlessly other than saying that because Respondent had pocketed the extorted ill-gotten gains, the issue is *fait accompli*. In denying the writ of mandamus, it appears that the court is unaware that the present matter originated in Maryland.

The BAP Decision

The BAP decision is full of errors, distortion of facts and does not speak to the reality of the case or the issue.

JURISDICTION

This Court has jurisdiction of this matter pursuant to 28 U.S.C. §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

Constitutional provisions

Article I, Section 8(1):

The Congress shall have Power to: (4) establish uniform laws on the subject of bankruptcy.

Article III, Section 1:

The judicial power of the United States shall be vested in one Supreme Court and such inferior Courts as the Congress may time to time ordain and establish.

Article IV, Section 1:

Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial proceedings of every other state.

Section 2(1):

The citizens of each state shall be entitled to all privileges and immunities of citizens of the several states.

Article VI:

This Constitution and the laws of the United States which shall be made under the Authority of the United States shall be the supreme law of the land, and the Judges in every state shall be bound thereby.

Amendment IV:

The right of the people to be secure in their person, houses, papers and effects against unreasonable searches and seizures shall not be violated.

Amendment V:

No person shall be deprived of life, liberty or property without due process of law.

Amendment VII:

In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by a jury shall be preserved.

Amendment XIV:

Section 1. All persons born or naturalized in the United States and subject to the juris dicta thereof...no state shall make or enforce any law to deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of laws.

Title 11 U.S.C.
Section 321

Serving as a trustee

Section 350

Closing a case and reopening to accord relief to the debtor or someone with standing

Section 522(b)(1)(2)(A) and 522(3)(A)

Allows a state to substitute its own system of debtor exemptions, and permits the debtor to claim exemptions under state law without limitations on amount

Section 541(a)(1)

The estate is comprised of all legal or equitable interest of the debtor in property at the commencement of the case subject to the exemptions.

Section 554(c)

Any property scheduled under section 521(1) and not administered at the time of closing of the case is abandoned to the debtor.

Section 706

Conversion to another chapter is available only to a party in interest

Section 707

This section recognizes voluntary dismissal or dismissal by the court

Section 727

A court may deny or revoke discharge

Section 5010

A case may be reopened on motion of the debtor or another party in interest as per Section 350 of the code. In a Chapter 7, 12, or 13 case a trustee shall not be appointed unless, after an evidentiary proceeding it is determined that a trustee is needed to protect interests of the debtor and creditors.

Title 18 U.S.C.
Section 1962

Collecting an unlawful debt in an unlawful manner

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Title 28 U.S.C.
Section 157

Bankruptcy Court is a court of limited jurisdiction

Section 1411

Bankruptcy does not affect the right to a jury trial

Section 1412

Change of venue: a district court may transfer a case or proceeding under Title 11 to a district court for another district for the convenience of the parties.

Title 42 U.S.C.
Section 1983

Any person that causes a citizen the deprivation of any rights, privileges, or immunities secured by the Constitution or the laws of the United States, and does so under color of law shall be liable in an action at law....

State of Maryland Code
Courts and Judicial Proceedings:

The opt out of the federal exemptions and the mandatory claiming of the state exemptions.

Section 11-504(g)

In any bankruptcy proceeding debtor may not claim the federal exemptions provided by Section 522(d) of the U.S. Bankruptcy Code.

Section 11-504(h)

In addition to other exemptions provided by the code, money or other assets payable to a beneficiary in a retirement plan, a # 401 – and at least ten others –

shall be exempt from any and all claims of the creditors of the beneficiary or participant

Section 11-504(d)

The debtor may not waive, by cognovit note or otherwise the provisions of subsection (h) of this section

Section 11-506(b)

The court may strike a waiver of exemptions filed by the debtor.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 361 (1977)

The debtor is permitted to convert nonexempt property into exempt property before filing a bankruptcy petition. The practice is not fraudulent as to creditors, and permits the debtor to make full use of the exemptions to which he is entitled under the law.

New York Civil Practice Law and Rules (NYCPLR) Permissible Exemptions in Bankruptcy

NY State has opted out of 11 U.S.C. §522(b)(1)(2)(A) and substituted its own system of exemptions.

Section 5205(2) of the NYCPLR exempts all trusts, monies, other assets – there are innumerable plans named – held for retirement limiting the amount to $1,095,000 per person.

These retirement funds are exempt from all creditors, with the exception of child or spousal support as per a qualified Domestic Relations Order.

Article 10-A, Section 282 1.2. & 284

Section 282 is the same as section 5202 of the NYCPLR

Section 284 mandates that debtors domiciled in NY State are not authorized to exempt property as per Rule 522.

The State of California also exempts retirement funds in a broad spectrum of permission.

STATEMENT OF THE CASE

A Chapter 7 petition filed on Petitioner's behalf on March 26, 1996, in the State of Maryland was fully administered and closed by the Court on July 7, 1996, and the trustee dismissed. Two years later in May 1998, the same dismissed trustee, without standing and deceiving the Court, acting on behalf of a revengeful, scorned former husband sought to reopen the case while deceiving the court about his motives and purpose. Title 11 U.S.C. §350 permits reopening for the debtor or creditors, but not predators. The creditors were never heard from, but the Court reopened, and not long thereafter, an emergency in the State of California caused Petitioner to seek a change of venue to the Oakland Bankruptcy Court. That was a change to a lawless hell and years of

torment during which, under false pretenses, by fraud, force, extortion and other nazi methods, without standing or jurisdiction, Petitioner's exempt retirement funds, securities in the amount of $450,000-$475,000 were stolen and pocketed by Respondent, who called himself "trustee" for a non-existent imaginary estate and the purloined assets: "fees" "fees for getting himself fees." This plunder begs to be reversed and the ill-gotten gains disgorged. The Constitution does not tolerate such legal anarchy.

STATEMENT OF MATERIAL FACTS

I. The origination of the purloined assets

In 1984, Petitioner, then a resident of Amherst, New York, was preparing to file for divorce[2] and found herself the victim of frauds – what is now called identity theft – by her then-husband who forged her name on fraudulent tax returns, on fraudulent financial statements, on any number of checks, most significantly on two checks in the amount of $95,600 of Petitioner's funds, from outside this marriage, and he was able to negotiate them in a bank where he had ties.[3] Armed with the requisite information such as social security number, same name and a willing

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[2] New York State had somewhat restrictive divorce laws requiring 6-12 months of counseling to save the marriage, children's counseling where relevant, before divorce petitions could be filed for provable "fault."

[3] The banks that negotiated the forged checks refused restitution, so suit was filed against them.

secretary, he sought to steal and convert all her assets set aside for retirement or her children from a prior marriage. At the advise of counsel and to enable her to protect her assets, a trust was created in April 1985, and the assets were re-titled in the name of the trust: The Max Family Trust. (App.par.1,p.17). Unfortunately, it was too late for some of the assets.[4]

II. The Continuation

In March 1993, after seven years of efforts and a 12-day trial, Petitioner was finally divorced. The distribution of the marital assets was a slightly complicated process because the law in that jurisdiction[5] called for all the assets that were marital on the day of the formal filing years before to be distributed to the parties. However, because the former husband had commingled marital assets with clients funds – for which he was charged and later punished – the Court could not distribute those funds although the Court calculated a 50% entitlement on

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[4] When the parties married, a second marriage for both to which Petitioner brought two young children from the prior marriage, the former husband and attorney, was a partner in a prestigious law firm. After a while, he decompensated, defrauded the law firm by pocketing legal fees, and was expelled. After expulsion, he turned to criminal conduct, such as using the marital vacation home in Florida for a cocaine business, tax fraud, prostitutes, stolen cars and boats, and the favorite felony of the NY State Organized Crime Strike Force.

[5] The action for divorce was filed on September 1, 1986, and the marital assets determination was fixed as of that date.

Petitioner's behalf, much in the way of "if you find it you can have it." She was awarded the retirement funds in the trust and 50% of the marital IRA. The IRA as part of a marital distribution, was not taxable to Petitioner, and could be drawn on at once. Petitioner was denied legal fees for this nine-year odyssey. In 1995, Petitioner relocated to Bethesda, Maryland. A relied-on professional position did not materialize, which was a very troubling development in view of all the funds borrowed to pay legal fees. Petitioner sought legal advise.

III. A well-intended solution

A Chapter 7 petition was filed on behalf of Petitioner by a Rockville, Maryland, law firm on March 26, 1996. All the debts and assets were lawfully scheduled, including the trust in which the IRA had been retitled[6] along with the other in compliance with the laws of the State of Maryland (App.V,p.18). At the time, Petitioner's claim against two banks for accepting two forged checks in the amount of $96,500 of her funds (note 4) had been dismissed, and appealed. The State of Maryland as well as the State of New York do not participate in the federal exemptions as per

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[6] Petitioner continued to be victimized by what is now called "identity theft," was then simply called forgery, as the scorned former husband was forging her signature on checks and documents.

11 U.S.C. §522[7] and instead have their own state statutes, which exempt all forms of retirements funds – in unlimited amounts in the State of Maryland, in New York State limited to $1,095,000 – from bankruptcy and all judgments (App.26&27), except child and spousal support. In the State of Maryland, exemptions from retirements funds are mandatory, and those not wishing to do so, must file a waiver, which the Court could reject after review. No such waiver was filed on Petitioner's behalf. The State of Maryland Rules permit nonexempt property to be made exempt just before filing for bankruptcy, provided it meets the exemption criteria. This was not an issue in the matter at instant. On May 1, 1996, pursuant to 11 U.S.C. §341 (App.IV,p.18) there was a creditors' meeting – none showed up, but Petitioner was. interviewed. The former trustee, Scott Field, Esq., was informed regarding Petitioner's retirement funds, and the claim against the banks, the details of it being dismissed and appealed, and these facts are noted in his filed documents. (App.V,p.18). On May 2, 1996, Mr. Field submitted his report to the Court (App.VI,p.18) in which he informed the court that he had completed his diligent inquiry into the case, noted that except the exempt assets, there are no assets for distribution, and that he wishes to be dismissed from the case. On May 31, 1996, the "bank

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[7] The State of California likewise has its own retirement funds exemptions and does not participate in the federal exemption scheme.

claim" was reinstated on appeal – in a modified version – by the Appellate Division of NY State Supreme Court in a reported case. (App.VII,p.18). On July 7, 1996, the debts were discharged, Mr. Field, Esq., was dismissed, and the case closed by the Court. (App.VIII,p.19).

IV. Reopening

On April 23, 1998, more than two years after the Chapter 7 filing, a scorned, former husband – a suspended lawyer – contacted former trustee Mr. Field by letter (App.IX,p.19), falsely claiming that when the Chapter 7 was filed on March 26, 1996, Petitioner's statement that the "bank claim" had been dismissed was not true and promised Field consideration if he reopened the case to harass Petitioner. While Mr. Field, Esq., could have verified the facts in this reported case in seconds, and he also knew that he had been dismissed, had no standing, his time to act was up after one year, and that his informant was not a creditor but a predator, but the vision of unearned profit danced in his head, and on April 28, 1998, moved the court to reopen – all this ex parte alleging on behalf of an interested party (App.X,p.19). Without inquiring further as to where Field's standing comes from, since he had dismissed him two years before, and bankruptcy reopenings are only for

debtors or creditors, nevertheless Judge Kier[8] ordered reopening on May 6, 1998. (App.XI,p.19)

V. Responding to fraud and miscreants with a civilized remedy.

The first choice of response for Petitioner and her attorney, would have been an evidentiary proceeding to reclose promptly. But there was a problem; such a proceeding would have had to include the former husband, which was complicated by the fact that he and some of his surrogates had been stalking, harassing and threatening Petitioner, for which acts he had been arrested and charged in two different jurisdictions, which led to his being permanently enjoined from being in Petitioner's proximity – the distances are spelled out, and it would have required special waivers for his appearance. To sidestep this potential circuits, no 11 U.S.C. §5010 proceeding, mandatory in reopened cases unless one converts to another chapter was held. Counsel advised the Court that we would be seeking conversion to Chapter 13, as a matter of right, and despite Mr. Field's objections – he stood up in Court when the conversion was approved, and shouted "I want $15,000, who is going to give me that?" No secret why he sought reopening – such a motion to convert to Chapter 13 was filed,

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[8] At times, Judge Kier appeared cognitively impaired, or had issues of cognitive dissonance. In another context, he expressed regrets that he had allowed himself to be deceived by Scott Field, Esq.

heard and on October 28, 1998, the Court approved it and so ordered. (App.XII,p.20).

VI. The emergency, and seeking a change of venue.

Around the time the Court in Maryland had approved the conversion to Chapter 13, a personal familial tragedy had developed in California: Petitioner's only sibling, an older brother, and only surviving member of her birth family, had taken ill, unexpectedly been diagnosed with a terminal illness, with not much time left. It was imperative for Petitioner to relocate to California to be with him, his wife and child and to try to prolong his life, always hoping that the dire medical prognosis, if not in error was exaggerated. After the conversion was ordered, Petitioner met with the Chapter 13 trustee, a payment plan was worked out, and after review he needed to provide the final signature. Being certain that in the immediate future Petitioner was going to leave for California, and not be able to return to Maryland, she petitioned the Court to speed up the final confirmation because she would be leaving by December 31, 1998, or in the alternative arrange for her appearance by telephone – after all teleconferencing was a fact of life by then. The Court rejected both requests. Believing in the integrity of the judicial system in general, and that "a Court is a Court," Petitioner sought a change of venue to the Oakland, California Bankruptcy Court, which request was at first denied, but later agreed to. (App.XIV,XV,p.20).

On December 31, 1998, Petitioner relocated to Walnut Creek, California.

VII. Former trustee Scott Field, Esq.'s lack of standing and lying to the Court repeats itself. Judge Kier's cognitive dissonance.

After the Court approved conversion to Chapter 13, there was a new trustee. Petitioner met with him, and Field was but a bad memory. But he never gave up; therefore, after Petitioner left for California, and his knowing that she would not be able to return, Petitioner's counsel discharged, he filed another motion, again without standing – in the expectation of harvesting unearned funds – to reconvert the Chapter 13 to the reopened Chapter 7. Judge Kier obliged again, all ex parte and on February 25, 1999, he vacated his own order of conversion – the conversion was Petitioner's absolute right, but Judge Kier by then could not deny Field anything. (App.XVI,XVII,XVIII,p.21).

VIII. HELL: The Oakland, California, Bankruptcy Court. American gestapo. Respondent Richard Spear, Esq.

The venue on the now returned to the reopened Chapter 7 case was changed on March 1, 1999. (App.XIX,p.21), and on March 14, 1999, just 13 weeks after relocating to California, Petitioner's sibling lost his fight for life. Within a few days, Respondent contacted Petitioner, told her he is the "trustee" of

her "estate," owns all her assets, and to turn them over promptly. This statement oft repeated, became his mantra in this case. No facts, no law, no creditors, just predators. Petitioner was ill, heartbroken and began to realize that the venue change had not been to another court, but to hell disguised as a court. Petitioner sought counsel, contacted a number of them who were interested until they heard who the court and the others involved are. Respondent's and his cabal's reputations having preceded them, each and everyone found an excuse; family, work, etc. Congress has mandated a Title 11 U.S.C. §5010 proceeding in a reopened case, which Petitioner assumed would be forthcoming soon, but in the meantime, Petitioner filed a motion – not very artful – to close the fraudulently reopened case. (App.XX,p.22). She went away for a few weeks to recover, and when she returned, there had been an avalanche of pleadings, and she was held in contempt all in absentia. It was easier to do this ex parte. Petitioner learned that her motion would not be scheduled – due process and equal protection do not exist there – and there would be no §5010 proceeding. Congress is not more powerful than hell.

Still seeking counsel, Petitioner contacted the President of the Northern California Bankruptcy Bar, who during a meeting with him provided facts and his opinion that it will be quite challenging for Petitioner to find counsel. Respondent Richard Spear, Esq., is a "multimillionaire universal trustee," and has been for more than 35 years. His name is placed

on 200 or more cases monthly, for about 70,000 in total at that time. He farms the cases out to attorneys, while he is the "money man," collects unearned fees, and anything he can get his hands on. Consequently all the attorneys Petitioner had contacted are eager for "his business" and not to go against him. This meeting which was quite informative was also frightening, and later Petitioner realized she should have become a refugee in her own land, and left the proximity of this cabal – this hell – and returned to Maryland. Or anywhere but there. This cabal later proved to be gestapo-like.

IX. There is no Constitution in the jurisprudence of Article I "Judge" Newsome, just offensive abuse.

Petitioner found herself in a Kafkaesque nightmare in a nazi-like Court, that boasted of his gestapo tendencies. At the first encounter with Petitioner, he told her that he intends to confiscate her exempt assets and give them to Respondent Spear, and will call this gift "fees" for getting himself fees. Assuming that he is under the influence, or forgot his psychotropic medications, Petitioner waited. But what continued was an abusive[9] biased nazi-like individual.

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[9] While ordinarily one files a pleading with a Court clerk's office and it is routinely scheduled by some form of routinely accepted calendaring for that Court. Not with Newsome. All pleadings have to be presented to him, and he does the scheduling – only those that he wants.

As a means to get away from this cabal, Petitioner filed Title 11 U.S.C. §707 and §727 (App.XXI,p.22) motions asking that the discharge of the creditors which was in amount of $100,000 be vacated and dismissed the Chapter 7, which will bring the creditors back, and Petitioner will escape this hell. These motions were likewise never scheduled. It became clear that he along with Respondent were planning to steal and pocket Petitioner's exempt assets. There had not been any sort of evidentiary proceeding, and Petitioner's several requests for a jury trial (App.XXIII,XXIV,p.22,24) were ignored, or objected to by Respondent and not acted upon.[10] Respondent, in conspiracy with Mr. Newsome, hired a thug to stalk Petitioner, trespass and[11] burglarize her residence, to steal her assets and her records. He was only able to steal the records.

Several months after this theft, Respondent requested a bribe. He asked Petitioner to give him $130,000 and he would go away, and Petitioner would be left with some money. There was no pretense of an "estate," or a "trustee" it was his pocket, and a bribe

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[10] *See* note 9, *supra*.

[11] The Judicial Council of the Ninth Circuit has in the past and allegedly continues to field numerous complaints about Mr. Newsome being abusive, disingenuous, does not allow attorneys to speak, but he himself represents certain "chosen" people like Respondent Spear who never once spoke in Court. There are a couple of published complaints: *In Re Charge of Judicial Misconduct*, 62 F.3d 320 (9th Cir. 1995). The complainant is an attorney, author and law professor.

and fraud. Continuing to believe in right and wrong, and that Courts are about truth, law and justice, and that the change of venue from Maryland to California did not bring this matter into gestapo hands, she declined. Another source of regret.

Shortly thereafter Mr. Newsome extorted and by force and false pretenses stole all of Petitioner's exempt by the laws of New York and Maryland retirement funds, securities in the amount of $450,000-$475,000 (App.XXII,p.24) and handed them over to Respondent Spear, as he said he would.

X. Petitioner was denied the right to be represented by counsel.

An attorney profile in a national publication led Petitioner to contact him, who agreed to represent her. But with Petitioner's funds extorted, stolen and lawlessly pocketed, she could not pay legal fees. The attorney, Mr. Ian McDonald, filed a very compelling motion asking the Article I Judge to order the release of securities in the amount of $50,000 for the legal fees to enable Petitioner to have legal representation. (App.XXV,p.25). Respondent objected stating that "Counsel will only go against us" and Mr. Newsome agreed, and denied. Petitioner began attending law school, albeit her law degree only confirmed what she already knew: that she has been the victim of racketeering crimes, and that those that should care about such matters did not.

XI. Petitioner's extorted and stolen assets were given to Respondent via a forged, unsigned order. Willful blindness, constitutional carelessness and neglect.

There had been a hearing at which Mr. Newsome, who represented Respondent and Respondent's counsel gifted him with Petitioner's stolen and extorted assets. Respondent Spear came to the proceeding equipped with a forged order that was dated, either having assurance that he would prevail or expectation for same. Within minutes after the hearing was over, this forged order, unsigned by Judge Newsome, was filed in the clerk's office where Respondent has his own section for his private business. Anyone else would have been denied the filing because there is a ten-day window to seek reconsideration. Petitioner was denied those ten days. Despite the forged unsigned order, Respondent immediately pocketed the stolen securities, totally unconcerned about the crimes involved, relying on "his people to stand behind him." Judge Newsome never signed the order. Petitioner was unaware of the forgery and appealed to the District Court and the Court of Appeals. A year or more later, Petitioner found out about this outrageous fraud and deceit and filed a Rule 60 Motion with the District Court to reconsider. (App.XXVI,p.25). While the Court acknowledged knowing of the forgery and the order not being signed and affirming it anyway, she further stated she cannot change anything because the Court of Appeals

affirmed the forgery and fraud as well. The Court of Appeals refused to reconsider.

XII. *De novo* review is a law book, law school or dictionary reality

Petitioner, who had been crushingly victimized by Machiavellian unscrupulous acts, and sought help from many sources, filed many motions and pleadings which were all denied, and then appeals. No single Court from Article I to the Court of Appeals has ever addressed the facts or applicable law, and Petitioner has never been heard in the lowest Court[12] or in the Court of Appeals. The pleadings, motions and appeals all had the same content: (a) there had been no trial or evidentiary proceeding to prove any wrong doing on Petitioner's part; (b) the case was reopened by fraud and lies to the Court in Maryland, and the ex parte reconversion was all by the same rapacious

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[12] *In Re Complaint of Judicial Misconduct*, 425 F.3d 1179 (9th Cir. 2005), against District Court Judge Wm. Real the misconduct allegations were outrageous, involving bankruptcy in which the Plaintiffs were victimized – the details too tedious and irrelevant, but the victim was represented by attorneys, while Judge Real represented – or argued on behalf of the person who was victimizing the opponents. When the attorneys challenged him on the facts and the law, he replied "that what he says is the law, he is the law, and if they do not like it they may take it up on appeal." They did several times. A couple of times the Court of Appeals upheld him, and it took more than three years before the victim – Judge Real's opponent prevailed. They however, had lost quite a bit of money. Judge Real faced impeachment.

predators; (c) there was no one with standing involved in this reopening and ongoing proceeding; (d) that Petitioner's constitutional rights to due process, equal protection and other rights have been violated; (e) she has been denied counsel while she is being persecuted and prosecuted by three people with law degrees and 40-50 years legal experience each; (f) the proceedings in the Oakland Bankruptcy Court were a perversion of laws and rights; (g) there was no trustee, no estate, just lies, false pretenses and profiteers; (h) Petitioner's exempt assets were lawlessly extorted and stolen; (i) that a change of venue is a change of Courtrooms, and not going from one state to another in the Untied States means going from one U.S. state into a gestapo-nazi[13] enclave; (j) that there is a doctrine of *the law of case, the law of origination*, which applies to the present case; (k) that at the first encounter the Article I Judge in the Oakland Court told Petitioner that he is planning to confiscate her exempt retirement funds, and intends to give them to Respondent and will call that gift "fees," fees for extorting himself fees; and (l) that he had in fact had done so by extorting and stealing Petitioner's funds in the amount of $450,000-$475,000 and handed them over to Respondent and called this plunder "fees."

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[13] Petitioner is a European-born American, whose early childhood was darkened by nazism and the gestapo, which perverted laws, abused decency for their evil dastardly acts, while no one spoke out against it. This is indelible in Petitioner's psyche.

To some pleadings Petitioner had attached the court docket, in support of and as proof that there had been no evidentiary proceeding, no trial and whatever Petitioner filed was never scheduled, or dismissed. At different times Petitioner attached the "fee" schedule for stealing fees. Since nothing had gone on other than robbing Petitioner, the billing statement entries are deliberately written in such a way – creative writing 101 for extortion – which made it a bit more time consuming to follow – just in case someone would be interested in following, but Petitioner reconfigured the schedules to item pricing to facilitate the reader – though it is unlikely that anyone looked at it. There are fee requests totaling $100,000 for research and intra office meetings to determine whether Petitioner is entitled to a jury trial, $30,000 for keeping the scorned former husband informed of the proceedings. Petitioner had filed a Title 28 U.S.C. §455 motion for Mr. Newsome to go away – since he would not let Petitioner go away. Of course, Respondent urged him to stay, and he did. Respondent billed $2,500 for that support. Unethical? Of course. But the Judicial Council of the Ninth Circuit has already known of Mr. Newsome and ethics.

Despite many approaches, neither the BAP, the District Court nor the Court of Appeals have ever examined this matter *de novo* to look at the facts of the case and the applicable law. It appears that there was always an intent to affirm the Article I court, and there was always an excuse to do so. Small group

cohesion at work. In the first appeal in which District Court Judge Chesney approved the extortion and theft of Petitioner's exempt assets, she wrote "we review de novo." She, nevertheless, did not. She wrote five pages on inapplicable California law and affirmed an order that she said she knew was forged, was unsigned (App.par.25,p.24), and deprived Petitioner of the ten-day statutory period of repose to allow for seeking reconsideration. It appears that she intentionally sought to deprive Petitioner of her rights.

While there are multiple causations for this conduct, it is assisted by certain designations used by the courts even though they are inapplicable: Respondent is referred to as trustee – which he was not in this case – he stuffed his own pockets with the purloined funds, and Petitioner is referred to as the debtor, which she had been twelve years ago. These titles create bias.

XIII. Rapacious legal debauchery, anarchy, lies, fraud: A Microcosm.

Late 1970's, scorned former husband, then member of a law firm. Firm purchases joint investment bond: a 30-year tax loss bond in Section 8 housing project titled Watergate located in Buffalo, NY, then the parties residence. The couple's marital share in former husband's name is 1%. Former husband expelled from firm, investment has to stay. During divorce trial, Court rules this is joint marital assets, Petitioner entitled to 50% of tax loss, and in decree of

March 17, 1993, Court orders an annual tax deduction form be provided Petitioner. In 2005 no tax deduction form. Petitioner inquires, is told that the bond had matured and generated $5,500. Scorned former husband mailed Petitioner's share to Respondent, does not want Petitioner to have it. Respondent returns it to the sender, saying does not belong to him. Scorned former husband sends it back to Respondent and says: "keep it it belongs to estate." Respondent pockets it. Petitioner demands the check. Respondent refuses, saying he is keeping it, it is his part of the estate. Section 541 says property of the estate is the available nonexempt property on the day of filing which was March 26, 1996. There is no estate, has not been for more than a decade, but who is to tell this to the marauders? Who is to represent Petitioner's interests if the Courts are negligent or worse: Petitioner believes that neither the BAP nor the Court of Appeals even read this. So where does one go? Who is to order the funds ordered by another Court as belonging to Petitioner, to be returned when the predatory marauders are in charge?

This case is about lies, criminal conduct, deceit, corruption, judicial indifference and gestapo tactics.

XIV. The request for a special writ of mandamus.

Petitioner had asked the Court of Appeals for a special writ to "bring this matter home" to Maryland where it originated, and to where Petitioner returned on 5/1/2007. The Court of Appeals denied.

REASONS FOR GRANTING CERTIORARI

I. THIS CASE PRESENTS EXCEPTIONALLY EGREGIOUS OFFENSES TO THE MAJESTY OF THE CONSTITUTION AND THE RIGHTS WITHIN, BY THE LOWER FEDERAL COURTS WHICH URGENTLY REQUIRE THIS COURT'S GUIDANCE AND SUPERVISION.

A. Petitioner was denied her Fifth Amendment due process rights.

(1) Five years after there had been an adjudication, creditors discharged, closed by the court Chapter 7 case, a consortium of corrupt predators, including a scorned nasty former husband, a corrupt former trustee reopened the case through lies, and later adding a corrupt Respondent, an Article I court disabled by diminished judicial ethics, all without standing, through forgery and false pretenses – conspired to extort and steal through burglary, threats, terrorism, lies, fraud, deceit, Petitioner's exempt retirement funds approaching one half million dollars, and which were pocketed by Respondent calling them fees – compensation for the plunder. Throughout this now ten-year long racketeering conspiracy, there had been no compliance with the Constitution and the rights within. Petitioner has been denied due process, equal protection, denied counsel. She was denied equal access to an unbiased court, and since there was no trial or evidentiary

proceeding, she has no idea under what theory under which these dastardly gestapo acts occurred other than like the gestapo – they could. The stolen assets were exempt from any judgment in two states of jurisdiction where they originated and were adjudicated: New York State and the State of Maryland. There was no jurisdiction in the State of California to where a venue change brought for convenience, and to finalize the felonious legal mischief in another state, years after the matter was adjudicated and closed, but not before the predators were extinguished. This Court's holding in *Taylor v. Freeland & Koonz*, 503 U.S. 638 (1973), is certainly on point in this case, as are some elements of *Rousey v. Jacoway*, 544 U.S. 320 (2005), but the nazi-like predators have ignored any and all applicable laws.

Petitioner's extorted and stolen retirement funds must be disgorged.

(2) The transfer of the now reverted Chapter 7 was a transfer to a lawless gestapo-like hell. Despite[14] the requirement of an immediate evidentiary proceeding under 11 U.S.C. §5010 in an reopened case, there has been none, ever. This Court has held in *Poe v. Ullman*, 367 U.S. 497 (1961) that the emphasis in the "Due Process Clause" is on process, a guarantee of procedural fairness. In this

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[14] See footnote 13.

paradigm of procedural due process this Court has included liberty, property and an economic interest in the equation. Such as a job interest in *Board of Regents v. Roth*, 408 U.S. 564 (1972), an interest in public assistance grants, *Goldberg v. Kelly*, 387 U.S. 354 (1970), a teaching position in *Perry v. Sinderman*, 408 U.S. 593 (1972), or the credit based purchase of goods in *Fuentes v. Shevin*, 407 U.S. 67 (1972).

(3) Petitioner's exempt property, her retirement funds exempt from any judgments in the two states wherein they were generated. The State of New York, and the State of Maryland, which consisted of publicly traded securities worth $450,000-$475,000 (App.24), were extorted and stolen from her by an Article I Judge in the Oakland, California Bankruptcy Court, through terrorism and force, through lies and false pretenses, without due process of law, without a trial, or any evidentiary proceeding that would meet the due process mandate and brazenly violating her Fifth Amendment rights.[15] (App.26&27).

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[15] *In Re Complaint of Judicial Misconduct*, 425 F.3d 1179 (9th Cir. 2005) against Judge Wm. Real, the misconduct was connected to a bankruptcy matter and involved money, perhaps only one eighth of what Petitioner lost. While the majority on the Judicial Commission investigating this matter, looked the other way, and were not concerned with the monetary loss of guiltless persons. In a long dissent, Judge Alex Kosinski, now the Chief Judge, wrote: "Congress has surely not made us the most powerful judges in the world so we can bestow thousand of dollars of bounties on our personal favorites whenever we feel like it."

B. Article I, Section 8(1) of the Constitution states: The Congress shall have the Power to establish uniform laws on the subject of bankruptcy.

(1) The First Bankruptcy Act established by the 2nd Congress in 1800 was intended to assist merchants with their creditors. The Bankruptcy Reform of 95th Congress intended to eliminate abuses and detrimental practices such as "the cronyism of the bankruptcy ring, and attorney control of bankruptcy cases; in fact the bankruptcy system operates more for the benefit of attorneys than for the benefit of creditors." H.R. Rep. No. 595, 95th Cong., 2d Sess. 92, repr. *In Re Balli*, 228 B.R. 346 (1998). From the establishment of the First Bankruptcy Act to the present the Process of bankruptcy has become significantly perverted.

C. The Fourth Amendment provides a right against unreasonable search and seizure for the people, their property and papers, which right may not be violated.

(1) In *Butcher v. Bailey*, 753 F.2d 465 (1985) a Bankruptcy Court had ordered Mr. Butcher to provide all his records. He refused claiming his Fifth Amendment right against self-incrimination. The Sixth Circuit Court of Appeals concluded that "there is nothing in the bankruptcy code or prior case law that requires a debtor to turn over personal records to

a trustee regardless of a valid Fifth Amendment claim of privilege."

(2) In the matter at instant no Fourth or Fifth Amendment privilege, nor a legitimate trustee were involved. Respondent hired a thug who after stalking Petitioner for awhile trespassed and burglarized Petitioner's home and stole all her records. Thereafter when she needed some of her records she had to pay a copy service to go there and copy them. This stealing of the records was obviously highly unconstitutional, but consistent with nazi-gestapo tactics employed to victimize and intimidate Petitioner. It took some time to learn the facts with the assistance of a police detective, but the Article I court – Mr. Newsome – responded with an arrogant "so what?" How can one respect or even dignify with the title "a Court" that hires thugs to stalk and burglarize.

D. The Seventh Amendment provides a right to a jury trial.

(1) Petitioner had been prosecuted and persecuted by Respondent in tandem with an Article I Judge – Mr. Newsome – who for all practical purposes represented Respondent Richard Spear, without any evidence of what she had done wrong, other than she had exempt assets and they wanted them. Petitioner filed several motions and requests for a jury trial which were never scheduled, never acted upon, and just ignored. Her constitutional right to a jury trial was left to die by silence and neglect.

(2) In *Grandfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989) in a case quite similar to the present one, on this issue in which Appellant *Grandfinanciera* is denied the requested jury trial but this Court affirmed that right. The Court accurately characterized the right of a trustee to recover a conveyance as a "private right," that is closely intertwined with a federal regulatory program that Congress has power to enact, *Thomas v. Union Carbide Agricultural Products Co.*, 73 U.S. 568 (1985). But the Constitution prevails.

E. Petitioner was denied her Fourteenth Amendment right to equal protection.

(1) Petitioner was denied the opportunity to be represented by counsel, while the Article I court, represented Respondent Spear, himself an attorney for more than 50 years who had additional counsel, but Judge Newsome represented both of them. All of the above mentioned individuals having taken an oath to uphold the Constitution, ignored that oath and trampled on the Constitution, and denied Petitioner's rights to have legal representation.

(2) At the heart of the Constitutional guarantee of equal protection lies the simple command that the government must treat citizens as individuals entitled to protection. *Metro Broadcasting, Inc. v. Federal Communications Comm.*, 497 U.S. 547 (1990). The Constitution of the United States was

designed for the common and equal benefit of all people. *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816). In *Morey v. Doud*, 354 U.S. 457 (1957) in which the applicable law created required that all like business enterprises submit to licensing procedures, except one. This Court invalidated the law as a violation of equal protection. The Court held that the purpose of the Act was to afford the public continuing protection. The Court held that the purpose of the Act was to afford to public continuing protection, and the discrimination in someone's favor does not conform to that purpose.

II. STANDING IS A CONSTITUTIONAL MANDATE. WHILE PETITIONER'S RIGHTS WERE VIOLATED, THE MANDATE WAS TRAMPLED.

A. The Jurisprudence of this Honorable Court has continuously emphasized the Article III requirement of standing to invoke the power of the Courts.

(1) The judicial power to litigate exists only to redress or to prohibit against injury to the complaining party. The federal courts jurisdiction can be invoked only when the complainant himself has suffered some threatened or actual injury resulting from the putatively illegal action alleged. *Warth v. Seldin*, 422 U.S. 490 (1975). In *Allen v. Wright*, 468 U.S. 737 (1984) the Court held that to have standing, the injury claimed is likely to be redressed by a

favorable decision. The injury in fact of a legally projected interest is the holding in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). In *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26 (1976), this Court defined standing as the tracing of the injury to the challenged actions of the defendant, noting lack of same in *Elk Grove Unified School District v. Newdow*, 124 S. Ct. 2301 (2004).

(2) Petitioner was the only one with standing to invoke the power of the court, because she was being victimized, had her assets extorted and stolen, had voluntarily sought a change of venue without knowing that such marauding lawlessness can exist in something that is called a Court and was trying to hold off the predators – unfortunately to no avail.

B. Petitioner's discharged and closed by the Court case, was reopened by persons without standing, therefore it was also without jurisdiction.

(1) Bankruptcy is about creditors and debtors. This Court has held that "bankruptcy itself has no fundamental rights or suspect class, it is about an individual's interaction with his creditors." *United States v. Krass*, 409 U.S. 434 (1973). *In Re Crykoski*, 320 B.R. 385 (2005) the Court held that every action including a bankruptcy proceeding must be prosecuted by the real party in interest. There must be standing or capacity for standing, and jurisdiction or capacity for jurisdiction.

(2) In bankruptcy the individuals with standing are debtors and creditors, and the process calls for possible reopening to assist a debtor or a creditor. But the matter at the heart of the petition was not reopened by the debtor or creditors but lying predators. A nasty scorned former husband, and a lying former trustee without standing. There were no creditors, just predators. In virtually every pleading that Petitioner filed, every appeal, every motion – all which were ignored – Petitioner informed those that were not so willfully blinded that they could not read about this case being reopened by persons without standing, not the debtor or creditors but by marauders who were seeking to pilfer and for unjust enrichment. This offends the Constitution and removes any veracity from the process. All to no avail, as the plunder went on.

(3) In *National Organization for Women, Inc. (NOW) v. Scheidler*, 510 U.S. 249 (1994), this Court held that: "Standing represents a jurisdictional requirement which remains open to review at all stages of the litigation." *Bender v. Williamsport Area School District*, 475 U.S. 534 (1986). Petitioner respectfully requests that this Court review the matter at instant with a view toward that requirement, and give life to that holding.

C. This Court has held that a change of venue does not change the original Jurisdictional prerogatives nor does it change the law of the case.

(1) The purpose of 28 U.S.C. §1404 is to prevent waste, protect litigants and witnesses and promote the interest of justice. *Continental Grain Co. v. Barge E.P.L.*, 364 U.S. 19 (1960). In *Van Dusen v. Barrack*, 376 U.S. 612 (1964), this Court held that a transferee forum must apply the law of the transferor court. This was also the holding in *Ferens v. John Deere Co.*, 494 U.S. 516 (1990). The core of the *Erie Doctrine*, *Erie v. Tompkins*, 304 U.S. 64 (1938), is likewise that in transferring a case, the law of the original state must be applied. The law of a state must be taken by federal courts as controlling. *Meredith v. City of Winter Haven*, 320 U.S. 228 (1943).

(2) When the venue was changed at Petitioner's request to the Oakland California Bankruptcy Court, Mr. R. Newsome with his friends saw an opportunity to harass someone new, who had placed trust in the system and was without counsel. He had repeated several times what he had said the first time he faced Petitioner: that he plans to confiscate her exempt assets and give them to Respondent as fees. He refused to acknowledge that this case was subject to the jurisdiction and laws of another state. He acted like a "fuehrer", refused to acknowledge the facts and the law, and with sarcasm sort of taunted Petitioner with an implied "make me." He proceeded to act at will on behalf of Respondent and all the pleadings,

motions and appeals Petitioner filed were ignored. As Petitioner – being without counsel during this nightmare – began attending law school, and finishing same. She certainly made a lot of appropriate arguments. The willful blindness, the gestapo-like zealotry, the nazi-like lawlessness rendered all her constitutional law and fact based arguments irrelevant. "The decisions below have made the constitution and legislatures of sovereign states subject to the directions of an inferior federal court. This court has held that state legislatures are not subject to federal directions." *New York v. U.S.*, 505 U.S. 144 (1992).

III. STATE EXEMPTIONS: AT LEAST FORTY STATES HAVE OPTED OUT OF THE FEDERAL EXEMPTION RULES

A. State of New York exemptions: New York Civil Practice Law and Rules (NYCPLR) Permissible Exemptions in bankruptcy and other judgments.

(1) New York has opted out of 11 U.S.C. §522(b)(1)(2)(A) and substituted its own system of exemptions. Section 5205(2) of the NYCPLR exempts all trusts, monies, other assets – there are innumerable plans named, held for retirement, limiting the amount to $1,095,000 per person. These retirement funds are exempt from all creditors, with the exception of child or spousal support as per a qualified Domestic Relations Order.

B. State of Maryland Exemptions Code: Courts and Judicial Proceedings Mandatory claiming of State Exemptions.

(1) *Section 11-504(g)*: In any bankruptcy proceeding debtor may not claim the federal exemptions provided by §522(d) of the U.S. Bankruptcy Code.

(2) *Section 11-504(h)*: In addition to other exemptions provided by the code, money or other assets payable to a beneficiary, a 401 – and at least 10 other plans – shall be exempt from any and all creditors of the beneficiary with the exception of a payee with a qualified domestic relations order.

(3) Congress derives its power to enact bankruptcy laws from the Constitution, but in *Board of Trade v. Johnson*, 264 U.S. 1 (1924), this Court has held that the construction of bankruptcy law, albeit a federal question, where bankruptcy law deals with property rights which are regulated by state law, the federal bankruptcy courts will follows sate law. The State law exemptions in the matter at instant: the laws of New York State and Maryland are not unique. *In Re Solomon*, 166 Bankr. 832 (Bankr. D. Md.), *aff'd*, 173 Bankr. 325 (1994). (App.26&27).

(4) Retirement funds are routinely exempt in the jurisdictions where it is permitted, and the use of the exempt retirement funds varies. Such as in *In Re Kim*, 257 B.R. 680 (9th Cir. BAP); *In Re George E. Dudley v. Peter Anderson*, 249 F.3d 1170 (2001); and most importantly this Honorable Court's unanimous opinion in *Richard Gerald Rousey v. Jill Jacoway*,

544 U.S. 320 (2005), Petitioner's retirement funds were not taxable to her because it was part of a marital distribution.

Petitioner's retirement funds were exempted pursuant to the laws of the State of Maryland (App.IV,p.18), and the former trustee so informed the Court in his report. Conversely, Petitioner's attorneys would have had to file a waiver with the Chapter 7 Petition as required by Maryland law, indicating that Petitioner is not exempting retirement funds. No such waiver was filed. In the statement of facts (App.I&II,p.17), Petitioner explained that she had to retitle all her retirement funds in a different entity because she was the victim of identity fraud and theft.

IV. REOPENING A PREVIOUSLY CLOSED BY THE COURT CASE DOES NOT CREATE A NEW CASE OR A NEW "ESTATE"

(1) The fraudulent reopening of the old Chapter 7 case which was discharged and closed by the Court on July 8, 1996, was reopened by lies and fraud. But that did not mean that a new case was created, a new trustee or new applicable law. Petitioner's retirement fund exemptions were based on the laws of the states where this case originated. That is the law of the case. The fraudulent reopening did not change that. It is unfortunate that some of the Title I Courts are not sufficiently vigilant and are so easily deceived. In *Marbury v. Madison*, 5 U.S. 137 (1803), Justice

Marshall noted that "the framers of the constitution contemplated that instrument as a rule for the courts as well. Why else would judges be required to take an oath to support it?" How forward looking of Justice Marshall. 11 U.S.C. §350 holds that a case can be reopened to assist the debtor or a creditor, this re-opening was on behalf of predators. The Chapter 7 Petition filed on March 26, 1996, was closed by the Court on July 7, 1996. The former trustee sought reopening on April 28, 1998, on behalf of a scorned, angry former husband and lied about it to the court.

Abandonment

(2) In *Taylor v. Freeland & Koonz*, 503 U.S. 638 (1992), this Honorable Court held that after 30 days a trustee may not contest the validity of an exemption, even if there was no basis for the claim of exemption. *In Re DeVore*, 223 B.R. 193 (9th Cir. BAP 1998), the court held that the order reopening is not effective in bringing abandoned property under 554(c) back in to estate. Abandonment, even if there is greater value than previously believed, removes the property from the jurisdiction of the Bankruptcy Court. *Ozer*, 208 B.R. 630 (1997); *Gracyk*, 103 B.R. 865 (1989); *Atkinson*, 62 B.R. 678 (1986); and *Sherell v. Fleet Bank of NY*, 205 B.R. 20 (1997).

V. BY WHAT AUTHORITY DID A ROGUE ARTICLE I COURT EXTORT PETITIONER'S RETIREMENT FUNDS THROUGH FRAUD AND DECEIT?

(1) When the venue in the present matter was unfortunately changed to California, the Article I court became the ringmaster of a fraudulent gestapo-like enclave of his own creation. Respondent Richard Spear was labeled trustee which was a false pretense title, and all that they intended to steal from Petitioner was falsely labeled "the estate" to plunder on their own behalf and Respondent stuffed their pockets.

(2) Since there never was a trial or even an evidentiary proceeding, and the only thing she was ever told were lies and fraudulent statements, and threats in nazi fashion, Petitioner does not know what exactly her wrongdoing was and how that was resolved by these malfeasants – under false pretenses and defacing and misusing the law – stealing Petitioner's exempt funds – exempted in 1996 and stolen years later amounting to $450,000-$475,000, given to Respondent Spear and a couple of cronies, cured that wrongdoing. Petitioner knows that her exempt funds were extorted and pocketed by persons without standing, without rights in a corrupt racketeering conspiracy that has terrorized Petitioner for almost a decade. This Honorable Court cannot undo this harm done, but can order the unjustly and lawlessly stolen exempt retirement funds disgorged.

VI. THERE ARE ELEMENTS OF CRIMINAL ACTS AGAINST PETITIONER INVOLVED IN THIS MATTER

Petitioner believes that crimes have been committed against her, and covered up with false pretenses. There are several elements of RICO – 18 U.S.C. §1961 involving the unlawful extortion of funds that are applicable. Also might be the hiring of a thug to stalk Petitioner and burglarize her home. Petitioner also believes that the *doctrine of the fruit of the poisoned tree* might be applicable. There is a long straight line of fraud and deceit running from reopening to extortion and theft.

VII. THIS HONORABLE COURT'S SUPERVISORY JURISDICTION

The Court's Constitutionally conferred supervisory jurisdiction is also called on to review the lack of fidelity to the Constitution in the lower federal courts that ignore what they are required and expected to do. The District Courts have supervisory responsibility for the actions of the bankruptcy courts. How did it come about that such abusive lawless, deceptive, possibly criminal conduct has just gotten by the courts in the present matter. Willful blindness does not equate to supervision. How did a District Court knowingly accept a fake and falsified order that was not signed by the judge, rule on it and it went to the Court of Appeals who likewise ruled on it. They suborned a crime. This fraud all around appears to be justified by the good cause to terrorize Petitioner and

extort and steal her exempt assets. How did these courts never intervene?

CONCLUSION

Petitioner's plea before this Court is replete with evidence of extensive constitutional violations of Petitioner's rights to due process, equal protection, to be free from hired burglars and be secure in her home, her right to a jury trial, to confront any and all accusers, her right to bankruptcy without marauding predators having a lifetime franchise to seek ill gotten gains, her citizenship rights as they exist in the states of her domicile and other individual rights articulated by this Court, such as to come before an unbiased court: *Tumey v. Ohio*, 273 U.S. 510 (1927), that have been trampled upon and need this Court's intervention and correction through the court's certiorari jurisdiction.

The idea that going from state to state can mean going from civilization to gestapo-nazi hell should be repugnant to the Constitution and this Court.

Having the ultimate power and authority as the Court of last resort in this nation, Petitioner hereby pleads with this Court to remedy the abuses endured. While the Court cannot remedy the past abuses that Petitioner and even some members of her family have endured, but this Court can initiate the process of disgorgement of the extorted and stolen securities belonging to Petitioner – and are Respondent's ill gotten gains, through granting certiorari. Petitioner's

retirement securities have been accumulated over a long period of time (App.24) and awarded to her more than 15 years ago. There is no possibility for Petitioner to acquire retirement funds again. Therefore, unless this Honorable Court – this Court of last resort – intervenes and grants certiorari[16] which certainly will lead to disgorgement, Petitioner will be forced to live in poverty and even seek assistance from the State of Maryland, something the State seeks to avoid by mandating exempting any and all funds for retirement and many other generous exemptions.

Certiorari should be granted.

Respectfully submitted,

PEPI SCHAFLER, PHD MSSS, JD
10829 Brewer House Road
North Bethesda, MD 20852
Tel: 301-881-7079
Fax: 301-881-7202

[16] Petitioner is aware that she may not appear in this Court. Should she be so fortunate to have this Court grant certiorari, she will retain counsel admitted to this Court.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In the Matter of: PEPI SCHAFLER, Debtor, PEPI SCHAFLER, Appellant, v. RICHARD J. SPEAR, Trustee, Appellee.	No. 07-15265 BAP No. NC-06-01051-SJB MEMORANDUM* (Filed May 28, 2008)

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Smith, Jury, and Brandt,
Bankruptcy Judges, Presiding

Submitted May 20, 2008**

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument and therefore denies appellant's request. *See* Fed. R. App. P. 34(a)(2).

Pepi Schafler appeals pro se from the Bankruptcy Appellate Panel's ("BAP") decision affirming the bankruptcy court's final report and discharge order. We have jurisdiction under 28 U.S.C. § 158(d). We review the BAP's decision de novo. *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1063 (9th Cir. 2002). We affirm.

The BAP properly affirmed the bankruptcy court's orders. Schafler failed to offer cognizable arguments to this court or the BAP that challenge the bankruptcy court's orders. *See* Fed. R. App. P. 28; *United States v. Williamson*, 439 F.3d 1125, 1138 (9th Cir. 2006). Moreover, because disbursement under the final report was not stayed and all disbursements were made to entities that were not party to the appeal, the BAP properly concluded that any challenge to the final report was moot. *See Nat'l Mass Media Telecomm. Sys., Inc. v. Stanley (In re Nat'l Mass Media Telecomm. Sys., Inc.),* 152 F.3d 1178, 1180 (9th Cir. 1998).

Schafler's petition for a writ of mandamus fails to establish circumstances warranting such extraordinary relief and is denied. *See Spencer v. United States Dist. Ct.*, 393 F.3d 867, 869 (9th Cir. 2004).

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In the Matter of: PEPI SCHAFLER, Debtor, PEPI SCHAFLER, Appellant, v. RICHARD J. SPEAR, Trustee, Appellee.	No. 07-15265 BAP No. NC-06-01051-SJB ORDER (Filed Aug. 28, 2008)

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re: PEPI SCHAFLER, Debtor.	BAP No. NC-06-1051-SJB Bk. No. 99-42138-NS
PEPI SCHAFLER, Appellant, v. RICHARD J. SPEAR, Chapter 7 Trustee, Appellee.	**MEMORANDUM**[1] (Filed Jan. 18, 2007)

Argued and Submitted on
September 13, 2006, at Sacramento, California

Filed – January 18, 2007

Appeal from the United States Bankruptcy Court
for the Northern District of California

[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

Honorable Randall J. Newsome,
Chief Bankruptcy Judge, presiding

Before: SMITH, JURY[2] and BRANDT, Bankruptcy Judges.

The chapter 7 trustee sought approval of his final report which provided for the payment of administrative fees to trustee's counsel. The bankruptcy court approved the final report (the "Final Report Order") and concurrently entered an order discharging the trustee of any further administrative duties while allowing the case to remain open due to Debtor's pending appeals before the United States Supreme Court (the "Trustee Discharge Order"). Debtor appeals both orders. We AFFIRM the appeal as to the Trustee Discharge Order and DISMISS the Final Report Order appeal on jurisdictional grounds.

I. FACTS

On March 26, 1996, Pepi Schafler ("Debtor") filed a chapter 7 petition[3] in the District of Maryland.

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[2] Hon. Meredith A. Jury, United States Bankruptcy Judge for the Central District of California, sitting by designation.

[3] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated prior to the effective date (October 17, 2005) of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23.

Shortly thereafter, the trustee filed his no distribution report, and a final decree was entered on July 9, 1996, closing the case.

After the case was closed, the trustee received information from an interested party regarding potential undisclosed assets. Based on this information, the trustee sought to have the case reopened and the final decree vacated in order to permit him to investigate and pursue recovery of the potential estate assets. The case was reopened on May 7, 1998.

Pursuant to Debtor's request, on March 12, 1999, the case was transferred to the Northern District of California.[4] Subsequently, the successor trustee[5] initiated an adversary proceeding against Debtor for a declaration that certain assets, namely stock certificates and bonds held in trust and a condominium, were property of the bankruptcy estate.

On December 20, 2000, the bankruptcy court ruled that Debtor had fraudulently concealed her interest in the assets and deemed them property of the estate. Debtor appealed the judgment to the District Court and then to the Ninth Circuit. Both courts affirmed. Debtor sought review of the Ninth

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[4] Debtor relocated to San Francisco to assist in the care of her terminally ill brother.

[5] The chapter 7 trustee in Maryland was Scott D. Field. Richard Spear was appointed as the successor trustee when the case transferred to the Northern District of California. Richard Spear is the appellee in this appeal.

Circuit's ruling to the United States Supreme Court but was denied certiorari.

On February 14, 2001, while her appeal to the District Court was pending, Debtor filed an amended schedule C in which she claimed that an Individual Retirement Account ("IRA") was exempt from the bankruptcy estate. The trustee objected to the exemption on the ground that Debtor initially failed to disclose the IRA on her petition. The court sustained the objection, finding that she had fraudulently concealed the IRA. Debtor appealed the bankruptcy court's ruling to the District Court which affirmed the decision.

The trustee eventually recovered most of the assets and by December 2005 had completed the administration of the estate.[6] Consequently, on December 6, 2005, the trustee filed his final report, later amended on December 16, 2005. The final report showed total receipts of $377,598.15, disbursements of $268,732.68, and a balance of funds on hand of $109,042.66. The hearing on the final report was set for January 12, 2006.

In connection with the final report, Goldberg, Stinnett, Meyers, & Davis ("GSMD"), counsel to the

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[6] The final report states that all assets of Debtor in the trustee's possession have been reduced to cash. However, the trustee was unable to liquidate certain stocks because of Debtor's failure to locate and provide the stock certificates to the trustee.

trustee in California, filed its second and final application for compensation and reimbursement of expenses, requesting fees of $217,851.50 and expenses of $20,375.17. The law firm of Whiteford, Taylor & Presenton ("WTP"), counsel to the initial trustee in Maryland, also filed a final application for fees of $53,170.50 and expenses of $3,551.80.

On December 23, 2005, Debtor filed a "Motion In Opposition To The Proceedings Of January 12, 2006." The opposition did not direct any specific objections to the final report or to the fees and expenses of GSMD and WTP, but instead asserted Debtor's objection to the proceeding on the basis of her belief that it was "intended to legitimize the conspiracy racketeering theft, fraud and malicious misconduct by all of the participants."

On January 11, 2006, in light of the hearing on the final report and his intent to close the case, the trustee filed an "Application For Order That Undisclosed Assets Not Be Deemed Abandoned At Close Of Case" (the "Abandonment Application"). By the Abandonment Application, the trustee requested that upon the closing of Debtor's bankruptcy case, the court not deem abandoned any assets that Debtor had not turned over to the trustee pursuant to orders of the court or which had not been listed on Debtor's schedules. In response, Debtor filed a "Motion To Deny Application Re Closing Of The Case And Not Abandon Petitioner's Asset" wherein Debtor requested

the court not close her case due to her pending petitions to the United States Supreme Court.[7]

On January 12, 2006, the court conducted a hearing on the trustee's final report, the professionals' final fee applications, and the Abandonment Application, as well as Debtor's opposition to closing the case. All parties, except Debtor, were in attendance. In approving both fee applications, the court made clear that it went through "each and every page of both applications and . . . reviewed all the time records therein." Hr'g Tr. at 6, Jan. 12, 2006. Specifically, the court found that

> under Section 330(a) that the amounts that I'm about to award do constitute reasonable compensation for actual and necessary expenses rendered by a Trustee; that I've examined the nature, extent, and value of the services and the time spent; the rates charged, whether the services were necessary to and beneficial to the estate; and whether or not there was a reasonable amount of time, expense, commensurate with the complexity and difficulties which can't be overemphasized in this case; and that the fees, the hourly rates, appear to be – and the charges appear to be based upon comparable charges by comparably skilled practitioners; that there wasn't any unnecessary duplication;

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[7] The pending petitions concerned Debtor's allegations of extortion and the theft of her exempt assets by the bankruptcy court, the trustee, and the trustee's counsel.

> and that the services when they were rendered were reasonably likely to benefit the estate and were necessary to the administration of the case.

Id. Based on its findings, the court awarded $40,000 in fees and expenses to WTP,[8] $217,851.50 in fees and expenses of $20,375.17 to GSMD, and approved the final report.

The court then addressed the Abandonment Application and the closure of the case. In light of Debtor's three appeals pending before the United States Supreme Court, the court found it appropriate to enter an order that relieved the trustee of all further administrative responsibilities, but kept the case open pending information from the trustee that the case could be closed. The court believed that structuring the order in this manner accomplished everyone's goals without complicating the legal issues regarding abandonment, which had already been litigated through numerous appeals. In addition, the order relieved the parties of the burden of having to pay a reopening fee if any decision by the Supreme Court required further action in the case or the

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[8] WTP originally requested more than $50,000 in fees and expenses. At the hearing, in light of concerns expressed by the court, as well as the objections of the trustee, WTP agreed to fees in the reduced amount of $40,000.

trustee discovered undisclosed assets that needed to be administered.

Debtor appeals.

II. ISSUES[9]

1) Whether Debtor's appeal of the Trustee Discharge Order articulates any specific issue warranting review by this panel.

2) Whether the appeal of the Final Report Order is moot.

III. JURISDICTION

Federal subject matter jurisdiction is founded under 28 U.S.C. §§ 1334(b) and 157(b)(1). We have appellate jurisdiction over final orders pursuant to 28 U.S.C. § 158(b)(1) and (c)(1).

IV. DISCUSSION

As a preliminary matter, the trustee argues that the appeal should be dismissed due to Debtor's failure

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[9] Debtor presents numerous protestations regarding alleged acts of extortion, fraud, theft, and racketeering on the part of the bankruptcy judge, the trustee, GSMD, and others in her opening and reply briefs. As the criminal allegations go beyond the scope of this appeal, we decline to consider these matters. *Birting Fisheries, Inc. v. Huse-Sporsem (In re Birting Fisheries, Inc.)*, 300 B.R. 489, 504 n.15 (9th Cir. BAP 2003).

to comply with certain of the Federal Rules of Appellate Procedure ("FRAP") and the Federal Rules of Bankruptcy Procedure ("FRBP"). Specifically, the trustee complains that Debtor's opening brief fails to conform to 1) FRBP 8010 or FRAP 32(a), which provides the requirements for the form of the briefs; 2) FRAP 28, which requires an appropriate jurisdictional statement, appropriate references to record, appropriate summary of argument, and statement of applicable standard of review with respect to each issue presented; and 3) FRBP 8006 and FRBP 8009, which require an appellant to include an appendix that includes a copy of the order or judgment appealed from.

While it is true that Debtor has not strictly complied with the appellate rules, pro se litigants should be given latitude in complying with the FRAP and FRBP and be held to "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner,* 404 U.S. 519, 520 (1972); *see also Ms. S. v. Vashion Island Sch. Dist.,* 337 F.3d 1115, 1125 n.15 (9th Cir. 2003). Consequently, instead of dismissing the appeals on procedural grounds, we have chosen to rule on them based on the merits.

1. Debtor Fails to Present Any Issues Which Warrant the Reversal of the Trustee Discharge Order

In reviewing Debtor's briefs as to the Trustee Discharge Order appeal, the only recognizable argument

is that the Trustee Discharge Order was decided ex parte without proper notice to her, thus it should be reversed on due process grounds. The allegations of lack of due process regarding the Trustee Discharge Order are raised for the first time in Debtor's reply brief, thereby (ironically) depriving the trustee of an opportunity to address the issue in his responsive brief. The latitude granted to the shortcomings of pleadings presented by pro se litigants must cease when the due process rights of their opponents are adversely affected. *See Leer,* 844 F.2d at 634. And "arguments not raised by a party in [her] opening brief are deemed waived." *Smith v. Marsh,* 194 F.3d 1045, 1052 (9th Cir. 1999); *Eberle v. City of Anaheim,* 901 F.2d 814, 817-18 (9th Cir. 1990) ("It is well established in this circuit that the general rule is that appellants cannot raise a new issue for the first time in their reply briefs.").

Even if we were to consider this argument, the proof of service attached to the Trustee Discharge Order indicates that Debtor was served at her correct address. Moreover, the court did not enter the Trustee Discharge Order until after it held a hearing, which had been properly noticed, on the Abandonment Application and Debtor's "Motion To Deny Application Re Closing Of The Case And Not Abandon Petitioner's Asset." Thus, Debtor's due process arguments would be an insufficient basis for us to vacate the Trustee Discharge Order in any event.

Because Debtor's opening brief does not include any other arguments concerning the Trustee Discharge Order from which we can construe an issue, we deem Debtor's appeal of the Trustee Discharge Order as to any other issue to be abandoned. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) ("Issues raised in a brief which are not supported by argument are deemed abandoned."); *see also* FRAP 28(a)(4) (the brief of an appellant must contain "the contentions of the appellant with respect to issues presented. . . ."). Accordingly, Debtor's appeal of the Trustee Discharge Order fails.

2. No Relief Can Be Granted as to the Final Report Order Making Debtor's Appeal of It Moot

Although Debtor does not clearly articulate any specific issues regarding the Final Report Order, based upon a close review of her opening and reply briefs, we construe her argument to be as follows: the bankruptcy court abused its discretion in approving the final report which allowed for the disbursement of GSMD's and WTP's final fees and costs.

A court lacks jurisdiction over appeals which are moot. *Baker & Drake, Inc., v. Pub. Serv. Comm'n of Nev. (In re Baker & Drake, Inc.)*, 35 F.3d 1348, 1351 (9th Cir. 1994). An appeal will be dismissed as moot if the requested appellate relief is impracticable. *See id.* "Failure to obtain a stay, standing alone, is often fatal[,]" if the appeal is associated with property that

has been sold to a third party or is based upon a simple plan of reorganization that has been substantially culminated. *Id.*

An appellant's failure to obtain a stay of an order authorizing the payment of attorney's fees to *a party to the appeal,* however, does not cause the appeal to be moot. *Int'l Envtl. Dynamics, Inc., v. Logan (In re Int'l Envtl. Dynamics, Inc.),* 718 F.2d 322, 325-36 (9th Cir. 1983). In such a situation, we have the ability to "fashion effective relief by remanding with instructions to the bankruptcy court to order the return of erroneously disbursed funds." *Id.* at 326.

Debtor is appealing the Final Report Order which approved the disbursement of fees by the trustee to WTP and GSMD. The only party to this appeal, however, is the trustee. As a result, we only have the ability to remand with instructions to the bankruptcy court to order the disgorgement of any fees paid to the trustee. According to the final report, the trustee was not awarded any fees. Consequently, for us to be able to provide effective relief to Debtor (i.e., the return of the funds paid to WTP and GSMD), Debtor needed to obtain a stay of the Final Report Order prior to distribution. No stay was obtained by Debtor prior to the trustee's distribution[10]; therefore,

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[10] Debtor filed a motion with the panel requesting a stay of the Final Report Order. The panel denied the motion on the grounds that she failed to "demonstrate irreparable injury or probability of success on the merits sufficient to obtain a stay

(Continued on following page)

the trustee had every right to disburse estate funds to pay the fees approved in the Final Report Order, including those to WTP and GSMD.[11]

Because the trustee has already made all distributions pursuant to the final report, which we have no legal authority to undo, Debtor's requested relief that the distributed funds be returned is impracticable. Accordingly, we lack jurisdiction over the appeal as to the final report on the grounds that it is moot.

V. CONCLUSION

For the foregoing reasons, we AFFIRM as to the Trustee Discharge Order, and DISMISS the appeal of the Final Report Order.

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pending appeal." Order Denying Stay Pending Appeal at 2, Apr. 7, 2006.

[11] There were also separate orders entered on January 19, 2006, that approved the fees of WTP and GSMD. Debtor did not appeal either of those orders.

I

Revocable Trust named Max Family Trust

This agreement dated the 21st day of April, 1986 between Pepi K. Summer, now residing at 121 Deer Run, Williamsville, NY and Armin Schafler, brother of the Grantor, as successor Trustee.

Signed by the parties, attorneys, and notarized on April 25, 1986

II

State of New York, Supreme Court: County of Erie Index No: H-75004 (9.1.1986)
At a Matrimonial Special Term
Pepi Summer Plaintiff v Donald Summer Defendant.

ORDER

It is hereby: ORDERED that Shearson Lehman Brothers Inc. are immediately directed to roll over 50% of the IRA in the name of Donald Summer acct No. 35661472-15-065 in the IRA in the name of Pepi Summer,

Ordered, that Merrill Lynch is hereby directed to immediately draw on account No: 81626590 in the amount of $50,000 to Pepi Summer, by Nelson Zakia Esq. Dated July 14, 1993 Signed, Justice H. Boswell Roberts.

III

Salomon Smith Barney – Shearson Lehman Brothers
IRA Rollover Act No: 356-31998-13-065
Account value July 31 1993 $119,154
October 1994 re-titled in the name of Max Family Trust.

IV

District of Maryland, Southern Division
United States bankruptcy Court
March 26, 1996

Bankruptcy Petition

Case # 96-12203

Schafler, Pepi
(Pepi Summer)
4921 Cloister Drive
North Bethesda, MD 20852

Daniel R. Kennedy III,
Attorney at Law
51 Monroe Street,
Rockville MD, 20850

Exempt:

Dismissed lawsuit against Marine Midland Bank in debtors possession	exempt *CJ(5)(h)*
Divorce Claim against ex husband in debtor's possession	exempt *CJ(5)(h)*
Trustee of trust for the benefit of debtor's adult children in debtors possession Scott Field Trustee	exempt *CJ(5)(h)*

V

341 Interrogatories, May 1, 1996
Claims: Claim against Bank – for $96,500 – suit filed currently dismissed
Signed Trustee Scott Field

VI

Trustee's report of no distribution

I Scott D. Field having been appointed ... hereby state that I have made a diligent inquiry into the financial affairs of the debtor and the location of property belonging to the estate, and that there is no property available for distribution from the estate over and *above that exempted by law*. I request that this report be approved, and that I be discharged from any further duties as trustee.

Scott D. Field, May 2nd, 1996

VII

Supreme Court of New York, Appellate Division, Fourth Department 227 A.D.2nd 932, 643 N.Y.S. 2nd 256; 1996 App. Div. May 31, 1996, Decided and Filed.

Pepi S. Summer, Appellant v Marine Midland Bank, N.A. et al, Donald Summer defendant

Appeal from order of dismissal, reversed on the law, without costs

Signed Lawton, Wesley, Calahan, Balio and Davis.

VIII

United States Bankruptcy Court for the
District of Maryland
Case No: 96-12203
Final Decree

In Re Pepi Schafler, Pepi Summer — 4921 Cloister Drive, North Bethesda MD 29852

The estate of the above named debtor has been fully administered. Scott Field is dismissed as trustee of the above named estate.

The chapter 7 case is closed.

July 7, 1996 — signed Duncan Kier, US bankruptcy judge

IX

Donald Summer, 6096 NW 24th Street, Boca Raton, Fla

Date: April 27, 1998 — Re: Pepi Schafler, Bkcy

To Scott Field Esq. Trustee in Bkcy

My review of her petition in bankruptcy is as follows: She listed as dismissed an action in Monroe County against Marine Midland Bank. In reality that action is still pending.

Donald Summer.

X

US Bankruptcy Court, District of Maryland.

Trustee's Motion to reopen case, and vacate final decree. (Actually former trustee)

The trustee has recently received information from an interested part regarding potential undisclosed assets of the debtor.

The trustee requests that the above captioned case be reopened to permit the trustee to investigate and pursue recovery of the potential estate assets.

April 28, 1998 Scott D. Field.

XI

Order Reopening Case and Vacating Final Decree

Ordered that this case is hereby reopened under Chapter 7 of the Bktcy Code and that the US trustee is authorized to administer any and all remaining assets of this estate or to appoint a ch. 7 trustee to administer such assets.

May 7, 1998 U.S. Bankruptcy Court Judge
Duncan Kier.

XII

re: 96-12203

Motion to Convert Case to chapter 13

The debtor Pepi Schafler may convert to chapter 13 as a matter of right, and hereby requests converting this case from chapter 7 to chapter 13.

8/28, 1998 Michael L. Selter, Farkas & Manelli
2000 M. Street N.W., Washington DC

XIII

Re: 96-12203
Order Converting case to Ch 13

This case under Ch 7 be, and is hereby converted to a case under Chapter 13.

Date: 10/27/98 U.S. Bankruptcy Court Judge
Duncan Kier.

XIV

Letter: Re 96-102203
From: Pepi Schafler, To Judge Duncan Kier:

Dear Judge Kier: The enclosed schedule of a hearing that arrived in yesterdays mail provides that the confirmation hearing for the chapter 13 petition is scheduled for January 28, 1999. Since I will be leaving the state by December 31, 1998, I respectfully request that the confirmation hearing be rescheduled for prior to that date, or in the alternative the Court permit my appearance by telephone.

Respectfully

Date: 11/10, 1998.

XV

Case No: 96-12203 ch 13
United States Bankruptcy Court
for the District of Maryland

Motion for Continuance In Chapter 13 Proceedings, and Transfer of Venue to the Bankruptcy Court of Northern California
Dated December 9, 1998

XVI

Case No: 96-12203 ch 13

Order Denying Motion for Continuance and Transfer of venue

Dated December 22,1998 Signed Bankruptcy Court Judge Duncan Kier.

XVII

Motion to Reconsider the Order of this Court denying Debtors Motion for Continuance and transfer of venue

Dated December 26, 1998

XVIII

Case No 96-12203 ch 13

Order Converting (reconverting) Case to a case under chapter 7

After an exparte hearing on February 25, 1999 the case is re-converted to Ch 7. Notice is given debtor to comply with requirements of federal bankruptcy Rule 1019

Dated February 25, 1999 Signed Judge Duncan Kier.

XIX

Case No: 96-12203

Order Transferring Venue

Dated: February 26, 1999 Signed Judge Duncan Kier.

XX

United States Bankruptcy Court, Northern District of California, Oakland Division
Md. Case No 96-12203DK Ca. Case No: 99-42138NS
In Re: Pepi Schafler

Motion to Reclose a Three Year Old Previously Discharged for Two Years Chapter 7 case, and then One Year Ago Improperly, Unfairly and Unjustly Reopened.

This motion not artfully written was to serve as a fact finding replacement for Bankruptcy Rule # 5010 proceeding. This motion was never placed on the court's schedule and never heard.

Dated April 22, 1999 Signed by Petitioner

XXI

In the United State bankruptcy Court:
In Re Pepi Schafler Ca Case No: 99-42138 NS
Rule # 707 Motion to Dismiss Chapter 7 Petition
Dated May 28, 1999 Signed by Petitioner

XXII

Rule # 727 Motion for Revocation of Discharge
Dated June 1, 1999 Signed by Petitioner

XXIII

In the US bankruptcy Court
Demand for a jury trial.

Plaintiff hereby exercises her constitutional right, and demands a jury trial in the above identified matter.
Dated September 22, 1999 Signed by Petitioner.

XXIV

Reply to Motion to deny petitioner a jury trial
Pepi Schafler hereby wishes to remind the court that a jury trial is a right. **Petitioner repeats her previously requested and asserted right to a jury trial.**
Dated April 27, 2000 Signed by Petitioner

XXV

ATTACHMENT

Table of Petitioner's Retirement fund securities extorted, converted, and pocketed on June 24, 2000 all under false pretenses by Appellee Richard Spear. This list does not include the stock splits and dividends.

Disney	1200 shares
AT&T	250 shares
McDonalds	600 shares
Coca Cola	400 shares
Eli Lily	100 shares
AOL	2120 shares
GE	800 shares
Symbol Technologies	337 shares
Cardinal Health	562 shares
Microsoft	720 shares
Lucent Technologies	256 shares
Chevron	100 shares
Biogen	200 shares
Dell Computer	125 shares
Amazon	200 shares

XXVI

MOTION TO RELEASE SECURITIES TO PAY PETITIONER'S ATTORNEY FEES

By the law firm of MacDonald and Assoc. Iain MacDonald appearing Dated August 9, 2000

This is a comprehensive 7 page motion in which he outlined Petitioner's need and right to legal representation, along with the false premise of the positions taken by the court and Respondent, even though he had not yet seen all the documents nor knew the facts as yet. He advised the court that Petitioner has meritorious defenses that must be asserted.

However Respondent had replied that if Petitioner has counsel, he will only "go against them", and for their purposes they needed to maintain petitioner in torment.

The Motion was denied.

XXVII

In the United States District Court for the Northern District of California

Pepi Schafler, Plaintiff

Richard Spear, Defendant Case No 01-1818 MMC

Rule 60(b) Motion to Vacate Void Appellate Decision

Plaintiff asked the Court to vacate the decision of August 13, 2002 which was based on a forged order by Respondent that was not signed by the Judge. Respondent created a fake forged order and filed it immediately before the time to challenge the decision was up. And the court never signed it.

Dated June 14, 2004

Judge Chesney denied the motion on June 21, 2004, saying that she can't vacate because the Court of Appeals has affirmed.

XXVIII

STATE EXEMPTIONS: AT LEAST FORTY STATES HAVE OPTED OUT OF THE FEDERAL EXEMPTIONS RULES.

A. State of New York exemptions: New York Civil Practice Law and Rules (NYCPLR) Permissible Exemptions in bankruptcy and other judgments.

(1) New York State has opted out of 11 U.S.C. § 522(b)(1)(2)(A) and substituted its own system of exemptions. Section 5205(2) of the NYCPLR exempts all trusts, monies, other assets – there are innumerable plans named, held for retirement, limiting the amount to $1,095,000 per person. These retirement funds are exempt from all creditors, with the exception of child or spousal support as per a qualified Domestic Relations Order.

Article 10-A, Sections 282, 1, 2 & 284: Section 282 is the same as section 5205 of the NYCPLR. Section 284 mandates that debtors domiciled in New York State are not authorized to exempt property as per 11 U.S.C. § 522.

All of Petitioner's retirement funds were awarded her by a Domestic Relations Order of the New York State Supreme Court (County of Erie) where she had resided for many, many years before moving to Maryland in 1995.

B. State of Maryland Exemptions: Code: Courts and Judicial Proceedings Mandatory Claiming of Exemptions.

(1) Section 11-504(g): In any bankruptcy proceeding debtor may not claim the federal exemptions provided by Section 522(d) of the U.S. Bankruptcy Code.

Section 11-504(h): In addition to other exemptions provided by the code, money or other assets payable to a beneficiary, a 401 – and at least 10 other plans – shall be exempt from any and all creditors of the beneficiary with the exception of a payee with a qualified domestic relations order.

Section 11-504(d): The debtor may not waive, by cognovit note or otherwise, the provisions of subsection (h) of this section.

Section 11-506(b): The court may strike a waiver of exemptions filed by a debtor

H.R. Rep. No. 595, 95th Cong., 1st Sess. 361 (1977): The debtor is permitted to convert nonexempt property into exempt property before filing a bankruptcy petition. The practice is not fraudulent as to creditors, and permits the debtor to make full use of the exemptions to which he is entitled under the law.

(2) It is the public policy of Maryland to protect from creditors certain assets set aside to support individuals in retirement. There is no dollar limit on this State exemption. *In re Solomon*, 166 Bankr. 832 (Bankr. D. Md.), aff'd, 173 Bankr. 325 (1994).

PETITION FOR RE-HEARING

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(2)

08-695
No.

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

PEPI SCHAFLER,

Petitioner,

v.

RICHARD SPEAR,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR REHEARING

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The Petitioner herein respectfully moves this Court for an order vacating it's denial of the petition for a writ of certiorari, entered on January 12, 2009, and granting the petition . As grounds for this motion , Petitioner states the following:

1. THE DECISION IN ROTHGERY v GILLESPIE

On June 28 2008, while the present petition for certiorari was in the early stages of being worked on this Court decided *Rothgeru v Gillespie County Texas,* 171 L.Ed 2nd 366(2008). The Court's holding in this matter is that adversary judicial proceedings trigger attachment of the Sixth Amendment right to counsel. Associate Justice Souter writing for the Court stated: "Here the right to counsel attaches when the accusation attaches. Faced with the prosecutorial forces of organized society and immersed in the intricacies of the law , the individual will lack the capacity to defend himself against a formal accusation of wrongdoing. The Sixth Amendment right to counsel applies whether a defendant is or is not in custody, and triggers before a charge .In *McNeil v Wisconsin* , 501 U.S. 171 (1991) this Court held that: "the Sixth Amendment guarantee to counsel has as it's purpose to protect the unaided layman at confrontations with his "expert adversary"

Petitioner's writ of certiorari identifies her lack of counsel as the cause of major injury when confronted with false albeit serious accusations, ex parte proceedings all which caused her great harm, such as having her lawfully owned property extorted and stolen from her and pocketed by miscreants who falsely claimed that they were acting under the color of law. Without counsel, Petitioner's Fourth, Sixth and Fourteenth Amendment rights were violated

2. THE ARTICLE I COURTS

The right to bankruptcy or receivership as it is referred to in the corporate world, is as old as the republic .For almost two centuries this process was part of the Federal District Courts and Article III judiciary 's duties , therefore Constitutional mandates , the Bill of Rights were a routine part of the process. The bankruptcy reforms of the 95th Congress and the creation of separate courts with Article I judges who are random hires , who are supposed to be supervised by Article III Courts has significantly changed the whole paradigm. It appears that these courts have been privatized, and if there is anything resembling supervision , it is supposed to come through the appellate process.

In *United States v Kras,* 409 U.S.434 (1973) Justice Blackmun speaking for the Court , stated that "bankruptcy is not the only method available to a debtor for the adjustment of his legal relationship with his creditors . He might be able to adjust his debts by negotiated agreement with his creditors. That was then-before this Article I privatization when bankruptcy disputes were only between the parties in interest, and unresolved disputes could be brought to the Federal District Court with the same constitutional prerogatives as any other disputes. This new paradigm of privatization has elevated individual self interest under the guise of law , as de facto law , and Justice Blackmun's holding about "bankruptcy is about the relationship of a debtors and his creditors " appears to need augmentation There are now additional parties in that arrangement.

In the long tortured odyssey of this case , in various motions, pleadings ,appeals, Petitioner has decried the fact that she was without counsel , and other constitutional violations. No one cared. In the App (6) to the petition for certiorari ,in the BAP decision there is no mention of constitutional rights, no trial, no evidentiary proceeding, no party with standing , no legal

counsel, no compliance with the bankruptcy rules , no respector this Court's holding on exemptions - none of that. The facts recited by the BAP are misstatements and deceit put forth by Respondent that do not make sense either logically , judicially , or legally but this BAP decision was intended to legitimize the illegitimate, and move the opinion forward without any meaningful and relevant decision making.

3. RELEVANT FACTS IN SUPPORT OF REHEARING

The ch 7 was filed by counsel on Petitioner's behalf on March 26, 1996 in the State of Maryland Case No: 96-12203-DK.The appropriate exemptions were claimed , approved by the trustee on May 1, 1996. The trustee submitted his report that day , alleged a very thorough investigation, noted exempt assets and asked to be dismissed. The Court discharged the creditors, dismissed the trustee and closed the case on July 7, 1996.

More than two years after the original filing , on May 7 1998 the former trustee , by now long without any standing other than greed, ex parte , at the urging of a scorned former husband who promised him consideration to harass Petitioner asks the court to reopen the case , and the court, without any other question obliged immediately. In this new paradigm of a privatized court , the former trustees interests supersede facts , laws, individual rights , the constitution , the bankruptcy rules , the rules of evidence , the rights of Petitioner , and the holding of this Hon. Court in *Taylor v Freeland &Kronz* , 503 U.S. 638 (1992) that pursuant to Rule 4003 : " a trustee may not contest a claimed exemption after 30 days , even if there was no colorable basis for claiming same. Petitioner was represented by counsel, but after the fact. There was no prior notice that it was going to be reopened. In this privatized court , it appears that only the insiders count: a former trustee"bounty hunting" with unbridled greed by the former trustee. No creditors appeared.

On October 28. 1998 Court orders conversion to Ch 13.as a matter of statutory law and entitlement at the request of Petitioner's counsel. The former trustee -in those courts being a private trustee appears to be a life time position self created , without consideration for standing, and the constitutional rights of others. In this privatized court he objected to the conversion to ch 13, and demanded money: $15.000. For what?- because he wants it. Receives none and is berated by the court for the request and for always making money requests for his employer-an accounting firm. He is dismissed and very angry. There is a ch 13 trustee ,Petitioner has met with him and works with him on the plan.

An urgent personal tragedy mandates the need to relocate to California All details of the ch 13 conversion are almost finished , and on Dec 28, 1998 the court agrees to a change of venue to Northern California to finalize the work on the ch 13 plan .Counsel is discharged, and she leaves for Northern California on Dec 31, 98.

The twice dismissed -over a three year period former trustee whose going away demand for $15.000 was rejected , did not give up his hunt for unearned money, which quest he is able to pursue in this " privatized court" paradigm .Seeking to exploit Petitioner's absence before the change of venue, and even though the court had full knowledge of his lack of standing -just unbridled greed, he requested and the court scheduled an ex parte hearing for Feb.19, 1999 , at which he presented false allegations of misdeeds against Petitioner. This was 3 years later, did not come from a creditor, but the former trustee -predator , all ex parte and without legal representation for Petitioner. He asks the court to vacate it's own order of ch 13 conversion which was statutory and not discretionary and the privatized court obliged The case was reconverted to the reopened ch 7 and on Feb. 26, 1999 the venue is changed to he Oakland California bankruptcy ct.

When the greed driven former trustee sought reopening from the court without jurisdiction in May 1998 he was never asked to present his probable cause, the party with standing, who is the complainant, which would have been the case with a prosecutor or police person. This is very clear evidence of the "privatization" of this legal process with it's own insiders who under the guise of law , run a private business-or charity for insiders. This violates all the laws that a bankruptcy court judge has sworn to uphold This greed driven man's second ex parte approach to the court , was like the first unconstitutional but the court treated this as if it was the utterances of a deity, rendering the rules of our constitutional republic irrelevant. The former twice dismissed trustee rules the court.There is obviously a serious flaw int this system.

This greed driven man's presentation to the bankruptcy court was an allegation of wrong doing against Petitioner , and pursuant to the Sixth Amendment , as well as this Court's holding in *Rothgery v Gillespie County Texas* , 171 L.Ed 2nd (2008) , and *McNeil v Wisconsin* , 501 U.S. 171 (1991) Petitioner was entitled to counsel.

The venue was changed to the Oakland , Ca bankruptcy ct. on March 4 , 1999. Within days there was a new case : Case number 99-42138 NS, and a new trustee: Respondent. Petitioner found it puzzling -why a trustee, since being a trustee is not a honorific title, but rather is someone that holds property on behalf of someone else. Why was that to be ,since the discharged creditors never came forward for the prior three years , and he like the previous greed driven man , apparently was seeking property for himself.

Congress created Rule # 5010 to address reopened cases to grant relief to debtors or creditors. limited to debtors or creditors. The rule further holds that the Court is required to hold an evidentiary hearing to determine whether a trustee is needed. Petitioner was anxiously waiting for that hearing-but it was never held, nor was any evidentiary proceeding or a trial ever held in this case

Within days of the change of venue Petitioner was contacted by Respondent who informed her that he owns her exempt assets , and to hand them over promptly . She was ill and without counsel. She left for a few weeks , and upon her return there was a stack of documents , holding her in contempt and still demanding her exempt assets. The Fifth, Sixth and Fourteenth Amendment guaranteed Petitioner the right to counsel, due process, but there was none for her

Having no choice but to continue without counsel, at her first appearance in the Oakland bankruptcy court she was told by the court that he intends to confiscate Petitioner's exempt assets and will give them to Respondent and call that gift "fees". For years thereafter he boasted about having said that. Since almost no one speaks like that, Petitioner assumed drug or alcohol induced transient impairment .But nothing ever changed. He was not concerned with dissent, because he knew and would make sure that Petitioner was without counsel. This court was completely privatized , had privilege laden insiders who were represented by the court. Respondent, while enjoying his favoritism and good fortune-what rights , what constitution named his bank account wherein he negotiated Petitioner's extorted exempt assets as "the estate" or "the cash cow".

After the first round of attacks another round of attacks began: Adversary proceeding case No 99-4228. Petitioner did not know it's full meaning and had difficulty reconciling and understanding the fact that if bankruptcy is a relationship between a debtor and creditors as Justice Blackmun held in *United States v Kras* , than why is she being terrorized by strange greedy people without standing The people that terrorized Petitioner had also formed a pact with her scorned former husband. Seeking to escape from this nightmare, she had asked the court to vacate the discharge and dismiss the ch 7 petition, but was refused. She needed to be kept in, to be robbed Without counsel, Petitioner was ignored, and disrespected. The Fourth, Sixth

and Fourteenth Amendment are of no meaning or consequence in this environment.

An adversary proceeding in this context is essentially an allegation or accusation of a misdeed. It is ironic that it comes from an individual who is seeking to profit from this endeavor and is misusing the law , attempting his self enrichment under the color of law, but the privatization of this process by this court has made this possible. Petitioner was accused of miss deeds , even though it was by someone that was planning to plunder her exempt assets for his own use, this was the outgrowth of the privatization of the legal process in some courts by favored insiders, the consequences were the same.

In *Rothgery v Gillespie County Texas, 171* L.Ed 2nd 366 (2008) ,Justice Souter writing for the majority stated: "the right to counsel attaches when the accusation attaches because faced with the prosecutorial forces of organized society , and the intricacies of the law , his capacity to defend himself against a formal accusation of wrongdoing"

In *McNeil v Wisconsin* , 501 U.S. 171, (1991) ,this Court held that " the Sixth Amendment guarantee to counsel has at it's purpose to protect the unaided layman at confrontations with the expert adversary"This was an immediate factor in the matter at instant . What does an adversary proceeding mean in the context of bankruptcy that is about a" relationship of a debtor and his creditors" *United States v Kras* , 409 U.S. 434 , (1973)

In September 1999, the Respondent with the court's support hired a thug to stalk Petitioner and burglarize her residence , and steal all her records. Petitioner lived in a private limited access development , and it took some time before the facts emerged. The investigating detective

from the Walnut Creek Ca, Police Department contacted Respondent who told the detective that Petitioner had taken bankruptcy funds, hence the burglary. It is pretty galling when the individual that is planning to abscond with your assets , accuses the intended victim. When Petitioner needed some of her records, she had to hire a printer to go to Respondent and have them copied. Petitioner certainly needed and was entitled to counsel.

4. THE FINAL ASSAULT EXTORTION AND THEFT

Within a few months there was another adversary proceeding Adversary proceeding case No: 00-4188. In that proceeding Respondent demanded Petitioner's exempt retirement funds because they belong to the estate, and since he was the estate they belong to him. Petitioner was detained overnight and had no choice but to allow the confiscation of her exempt retirement funds which were given to Respondent , who pocketed them and called them fees . Fees for getting himself fees. The extorted retirement funds were securities in amount of 450.00-$475.000. Petitioner was robbed and had no legal counsel to protect her interests. The exempt retirement funds were awarded to Petitioner by a New York State Order of Marital Dissolution. In New York State these funds were exempt from taxation and any judgment because they were part of a marital distribution. Petitioner had relocated to Maryland where the ch. 7 had been filed .They were exempt under the laws of the State of Maryland. which mandates exempting retirement funds that are in a variety of formats from any judgment including bkcy, to prevent citizens becoming dependent on the state Not to exempt retirement funds requires a waiver from the court.

5. PETITIONER WAS THE VICTIM OF CRIMES AND HER ASSETS STOLEN BECAUSE SHE WAS WITHOUT COUNSEL

By any measurable legal standard, Petitioner's retirement funds were hers completely and unequivocally . They were given to her as a NY State marital distribution, exempt from taxation ,exempt from any judgment in the State of Maryland including bankruptcy, having been claimed as exempt on the original petition, this Hon. Court held in *Taylor v Freeland &Kronz* , 503U.S. 638(1992) that the Rule #4003 holding must prevail, and after 30 days an exemption may not be challenged by a trustee, and then there is the issue of abandonment . There is a abundance of case law that holds that once a case is closed by the court all the remaining assets are abandoned to the debtor , and that abandonment is irrevocable . *In Re: DeVore* 223, B.R. 193(1998) . *In Re: Ozer* 208 B.R. 630 (1997) , *In Re: Johnston,* 49 F 3rd , 538 (1995) But all of these prerogatives were insufficient to prevent Petitioner's assets from being extorted ,stolen and pocketed , because she lacked counsel Likewise her constitutional rights were repeatedly and egregiously offended, but there was no one to claim them.

6. THE EFFECTS OF BEING WITHOUT COUNSEL ARE ALIKE EVEN IF THE CAUSATION DIFFERS

When Petitioner encountered the hell of the Oakland bkcy court she certainly had ample funds to pay for legal counsel, and contacted innumerable attorneys and even the president of the local section of the Bar. None were interested because Respondent and his associates bully people with threats that if they continue to represent an opponent they will charge them with misuse of bankruptcy estate funds. Petitioner requested that the court appoint counsel, and he refused. After Petitioner's funds were stolen and she could no longer pay legal fees , she located very expert counsel who asked the court to have some of Petitioner's funds returned so she could pay legal fees. Respondent urged the court to deny saying that :" if she has counsel, she will only go against us."The bkcy court denied.

CONCLUSION

For the reasons set forth above , as well as those contained in the petition for writ of certiorari, Petitioner prays that this Court grant rehearing of the order of denial , vacate that order and grant the petition.

Respectfully submitted

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January 29, 2009

PETITIONER'S RULE 44.2 CERTIFICATE

Petitioner hereby certifies that this petition for rehearing is presented in good faith and not for delay , and is restricted to the grounds specified in Rule 44.2

Dr. Pepi Schafler , MSSS, JD